**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 26-cv-60278-EA**

**ERNESTO GARCIA ROMERO,**

Petitioner,

v.

**KRISTI NOEM, Secretary, U.S. Department of Homeland Security, *et al.*,**

Respondents.
_____/

**RESPONSE TO ORDER CONCERNING SUBJECT MATTER JURISDICTION**

Respondents file this Response to the Court's Order concerning subject matter jurisdiction, 8 U.S.C. § 1252(b)(9) and 8 U.S.C. § 1252(g) [ECF No. 5]. In support of dismissal due to lack of subject matter jurisdiction, Respondents state as follows.

**INTRODUCTION**

According to the Petition, Petitioner was ordered to be removed from the country and is presently appealing a denial of his efforts to cancel removal. *See* Petition [ECF No. 1] at ¶ 3. On January 7, 2026, U.S. Immigration and Customs Enforcement (ICE) detained Petitioner for the purpose of executing his removal. *Id.* at ¶ 2. Petitioner is currently in ICE custody at the Broward Transitional Center, pending his removal. *Id.* at ¶ 8

As explained below, the Court does not have jurisdiction to review the government's decision to detain the Petitioner for the purpose of executing his removal.

## ARGUMENT

### I. This Court Lacks Jurisdiction Over Petitioner's Claims.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

#### A. Congress Stripped this Court of Jurisdiction to Prevent the Execution of Removal Orders.

Petitioner is, in essence, asking this Court to prevent ICE from executing his removal order by ordering his immediate release. *See* Petition at 23 ("Petitioner requests that this Court . . . [i]ssue a Writ of Habeas Corpus or other appropriate Order directing Respondents to remedy Petitioner's unlawful detention, specifically by: Immediately releasing Petitioner from ICE custody..."). This Court, however, lacks jurisdiction to grant such relief.

"[O]ur Constitution grants Congress the power 'to expel' or 'to exclude aliens, or any specified class of aliens, from the country[.]'" *Mokanu v. Warden Miami Federal Detention*, 25-cv-24121-EA, ___ F. Supp. 3d ____ , 2026 WL 472294, at *2 (S.D. Fla. Feb. 19, 2026) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 713-14 (1893). "In furtherance of this Power, Congress may either (1) prohibit judicial review of immigration-related actions and grant the President the exclusive authority to expel or exclude or (2) 'call in the aid of the judiciary to

ascertain any contested facts on which an alien right to be in the country has been made by Congress to depend.'" *Id.*

Federal law precludes a district court from interfering with the government's decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) specifically states that "no court shall have jurisdiction to hear any cause or claim by ... any alien arising from the decision or action by [ICE] to ... execute removal orders against any alien." 8 USC § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

The Eleventh Circuit has explained that "[s]ection 1252(g) bars review over 'any' challenge to the execution of a removal order – and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that where there is challenge to the validity of a removal order, district courts lack jurisdiction to hear any "cause or claim brought by an alien arising from the government's decision to execute a removal order").

Here, Petitioner does not deny the existence of the order of removal or assert a legal status that would allow him to remain in the country. Instead, he suggests that because he has appealed the denial of his cancellation of removal petition, this Court should intervene and direct his release. *See* Petition [ECF No. 1] at 23. Section 1252(g), as interpreted by the Eleventh Circuit in *Camarena*, deprives this Court of jurisdiction to grant such relief. *See also Rivera-Amador v. Rhoden*, Case No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla. Dec. 19. 2025) (holding that Section 1252(g) "divests the Court of jurisdiction" from enjoining respondents from detaining and deporting petitioner subject to a removal order); *Mapoy v. Carroll*, 185 F.3d 224,

230 (4th Cir. 1999) (holding that district court lacked jurisdiction to hear a challenge to execution of order of deportation pursuant to § 1252(g)).

Congress, by passage of the REAL ID Act, amended § 1252(g) (and § 1252(b)(9), discussed *infra*), specifically to strip courts of habeas jurisdiction when these statutes apply. *See Mokanu,* 2026 WL 472294, at *4 (S.D. Fla. Feb. 19, 2026) (citations omitted). Accordingly, as the decision to secure an alien while awaiting removal or to grant a bond is "so directly and immediately connected to the decision to commence removal proceedings that it 'constitutes an action taken to commence proceedings' … courts have no jurisdiction to review ICE's decision to take [aliens] into custody and to detain [them] during [their] removal proceedings…" *See id.* (citations omitted).

In summary, Congress divested this Court of jurisdiction to prevent the execution of removal orders, meaning it should dismiss the Petition for lack of jurisdiction.

**F. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims.**

Section1252(b)(9) presents an additional obstacle to the Petitioner, and provides that "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings. Notwithstanding any other provision of law (statutory or nonstatutory),

. . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States]. 8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . .

Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain him in the first place. Though the Petitioner

frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

**CONCLUSION**

For the foregoing reasons, the Court lacks subject matter jurisdiction over Petitioner's challenge to detention.

Respectfully submitted,

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